

AMENDED IN SENATE APRIL 15, 2015

**SENATE BILL**

**No. 738**

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**Introduced by Senator Huff**

February 27, 2015

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An act to amend Section 49414 of the Education Code, relating to pupil health.

LEGISLATIVE COUNSEL'S DIGEST

SB 738, as amended, Huff. Pupil health: epinephrine auto-injectors: liability limitation.

Existing law requires school districts, county offices of education, and charter schools to provide emergency epinephrine auto-injectors to school nurses and trained personnel who have volunteered, as specified, and authorizes school nurses and trained personnel to use epinephrine auto-injectors to provide emergency medical aid to persons suffering, or reasonably believed to be suffering, from an anaphylactic reaction. Existing law requires a qualified supervisor of health or administrator at a school district, county office of education, or charter school to obtain the prescription for epinephrine auto-injectors from an authorizing physician and surgeon, as defined, and authorizes the prescription to be filled by local or mail order pharmacies or epinephrine auto-injector manufacturers.

This bill would prohibit an authorizing physician and surgeon from being subject to professional review, being liable in a civil action, or being subject to criminal prosecution for ~~any act in the issuing~~ *issuance* of a prescription or order, pursuant to these provisions, unless the ~~act~~ *physician and surgeon's issuance* constitutes gross negligence or willful or malicious conduct.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 49414 of the Education Code is amended  
2     to read:  
3     49414. (a) School districts, county offices of education, and  
4     charter schools shall provide emergency epinephrine auto-injectors  
5     to school nurses or trained personnel who have volunteered  
6     pursuant to subdivision (d), and school nurses or trained personnel  
7     may use epinephrine auto-injectors to provide emergency medical  
8     aid to persons suffering, or reasonably believed to be suffering,  
9     from an anaphylactic reaction.  
10    (b) For purposes of this section, the following terms have the  
11    following meanings:  
12    (1) “Anaphylaxis” means a potentially life-threatening  
13    hypersensitivity to a substance.  
14    (A) Symptoms of anaphylaxis may include shortness of breath,  
15    wheezing, difficulty breathing, difficulty talking or swallowing,  
16    hives, itching, swelling, shock, or asthma.  
17    (B) Causes of anaphylaxis may include, but are not limited to,  
18    an insect sting, food allergy, drug reaction, and exercise.  
19    (2) “Authorizing physician and surgeon” may include, but is  
20    not limited to, a physician and surgeon employed by, or contracting  
21    with, a local educational agency, a medical director of the local  
22    health department, or a local emergency medical services director.  
23    (3) “Epinephrine auto-injector” means a disposable drug delivery  
24    system with a spring-activated needle that is designed for  
25    emergency administration of epinephrine to provide rapid,  
26    convenient first aid for persons suffering a potentially fatal reaction  
27    to anaphylaxis.  
28    (4) “Qualified supervisor of health” may include, but is not  
29    limited to, a school nurse.  
30    (5) “Volunteer” or “trained personnel” means an employee who  
31    has volunteered to administer epinephrine auto-injectors to a person  
32    if the person is suffering, or reasonably believed to be suffering,  
33    from anaphylaxis, has been designated by a school, and has  
34    received training pursuant to subdivision (d).

1 (c) Each private elementary and secondary school in the state  
2 may voluntarily determine whether or not to make emergency  
3 epinephrine auto-injectors and trained personnel available at its  
4 school. In making this determination, a school shall evaluate the  
5 emergency medical response time to the school and determine  
6 whether initiating emergency medical services is an acceptable  
7 alternative to epinephrine auto-injectors and trained personnel. A  
8 private elementary or secondary school choosing to exercise the  
9 authority provided under this subdivision shall not receive state  
10 funds specifically for purposes of this subdivision.

11 (d) Each public and private elementary and secondary school  
12 in the state may designate one or more volunteers to receive initial  
13 and annual refresher training, based on the standards developed  
14 pursuant to subdivision (e), regarding the storage and emergency  
15 use of an epinephrine auto-injector from the school nurse or other  
16 qualified person designated by an authorizing physician and  
17 surgeon.

18 (e) (1) Every five years, or sooner as deemed necessary by the  
19 Superintendent, the Superintendent shall review minimum  
20 standards of training for the administration of epinephrine  
21 auto-injectors that satisfy the requirements of paragraph (2). For  
22 purposes of this subdivision, the Superintendent shall consult with  
23 organizations and providers with expertise in administering  
24 epinephrine auto-injectors and administering medication in a school  
25 environment, including, but not limited to, the State Department  
26 of Public Health, the Emergency Medical Services Authority, the  
27 American Academy of Allergy, Asthma and Immunology, the  
28 California School Nurses Organization, the California Medical  
29 Association, the American Academy of Pediatrics, Food Allergy  
30 Research and Education, the California Society of Allergy, Asthma  
31 and Immunology, the American College of Allergy, Asthma and  
32 Immunology, the Stanford Allergy Center, and others.

33 (2) Training established pursuant to this subdivision shall include  
34 all of the following:

35 (A) Techniques for recognizing symptoms of anaphylaxis.

36 (B) Standards and procedures for the storage, restocking, and  
37 emergency use of epinephrine auto-injectors.

38 (C) Emergency followup procedures, including calling the  
39 emergency 911 telephone number and contacting, if possible, the  
40 pupil's parent and physician.

1 (D) Recommendations on the necessity of instruction and  
2 certification in cardiopulmonary resuscitation.

3 (E) Instruction on how to determine whether to use an adult  
4 epinephrine auto-injector or a junior epinephrine auto-injector,  
5 which shall include consideration of a pupil's grade level or age  
6 as a guideline of equivalency for the appropriate pupil weight  
7 determination.

8 (F) Written materials covering the information required under  
9 this subdivision.

10 (3) Training established pursuant to this subdivision shall be  
11 consistent with the most recent Voluntary Guidelines for Managing  
12 Food Allergies In Schools and Early Care and Education Programs  
13 published by the federal Centers for Disease Control and  
14 Prevention and the most recent guidelines for medication  
15 administration issued by the department.

16 (4) A school shall retain for reference the written materials  
17 prepared under subparagraph (F) of paragraph (2).

18 (f) A school district, county office of education, or charter school  
19 shall distribute a notice at least once per school year to all staff  
20 that contains the following information:

21 (1) A description of the volunteer request stating that the request  
22 is for volunteers to be trained to administer an epinephrine  
23 auto-injector to a person if the person is suffering, or reasonably  
24 believed to be suffering, from anaphylaxis, as specified in  
25 subdivision (b).

26 (2) A description of the training that the volunteer will receive  
27 pursuant to subdivision (d).

28 (g) (1) A qualified supervisor of health at a school district,  
29 county office of education, or charter school shall obtain from an  
30 authorizing physician and surgeon a prescription for each school  
31 for epinephrine auto-injectors that, at a minimum, includes, for  
32 elementary schools, one regular epinephrine auto-injector and one  
33 junior epinephrine auto-injector, and for junior high schools, middle  
34 schools, and high schools, if there are no pupils who require a  
35 junior epinephrine auto-injector, one regular epinephrine  
36 auto-injector. A qualified supervisor of health at a school district,  
37 county office of education, or charter school shall be responsible  
38 for stocking the epinephrine auto-injector and restocking it if it is  
39 used.

1 (2) If a school district, county office of education, or charter  
2 school does not have a qualified supervisor of health, an  
3 administrator at the school district, county office of education, or  
4 charter school shall carry out the duties specified in paragraph (1).

5 (3) A prescription pursuant to this subdivision may be filled by  
6 local or mail order pharmacies or epinephrine auto-injector  
7 manufacturers.

8 (4) An authorizing physician and surgeon shall not be subject  
9 to professional review, be liable in a civil action, or be subject to  
10 criminal prosecution for ~~any act in the issuing~~ *issuance* of a  
11 prescription or order pursuant to this section, unless the ~~act~~  
12 *physician and surgeon's issuance* constitutes gross negligence or  
13 willful or malicious conduct.

14 (h) A school nurse or, if the school does not have a school nurse  
15 or the school nurse is not onsite or available, a volunteer may  
16 administer an epinephrine auto-injector to a person exhibiting  
17 potentially life-threatening symptoms of anaphylaxis at school or  
18 a school activity when a physician is not immediately available.  
19 If the epinephrine auto-injector is used it shall be restocked as soon  
20 as reasonably possible, but no later than two weeks after it is used.  
21 Epinephrine auto-injectors shall be restocked before their expiration  
22 date.

23 (i) A volunteer shall initiate emergency medical services or  
24 other appropriate medical followup in accordance with the training  
25 materials retained pursuant to paragraph (4) of subdivision (e).

26 (j) A school district, county office of education, or charter school  
27 shall ensure that each employee who volunteers under this section  
28 will be provided defense and indemnification by the school district,  
29 county office of education, or charter school for any and all civil  
30 liability, in accordance with, but not limited to, that provided in  
31 Division 3.6 (commencing with Section 810) of Title 1 of the  
32 Government Code. This information shall be reduced to writing,  
33 provided to the volunteer, and retained in the volunteer's personnel  
34 file.

35 (k) A state agency, the department, or a public school may  
36 accept gifts, grants, and donations from any source for the support  
37 of the public school carrying out the provisions of this section,

- 1 including, but not limited to, the acceptance of epinephrine
- 2 auto-injectors from a manufacturer or wholesaler.

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